



BILLING CODE: 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2013-0042]

Dow AgroSciences LLC; Notice of Intent to Prepare an Environmental Impact Statement for Determination of Nonregulated Status of Herbicide Resistant Corn and Soybeans, and Notice of Virtual Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are announcing to the public that the Animal and Plant Health Inspection Service (APHIS) intends to prepare an environmental impact statement (EIS) on environmental impacts that may result from the potential approval of three petitions from Dow AgroSciences LLC seeking a determination of nonregulated status of herbicide resistant corn and soybeans. Issues to be addressed in the EIS include the potential environmental impacts associated with the increased use of certain herbicides and possible selection for and spread of weeds resistant to the herbicide 2,4-D combined with resistance to other herbicides (multiple resistance). We are also requesting public comments to further delineate the scope of the alternatives and environmental impacts and issues to be included in this EIS. We are also announcing that APHIS will be hosting a virtual public meeting during the scoping period. The purpose of the scoping meeting will be to allow the public an opportunity to comment on the range of alternatives and environmental impacts and issues discussed in the EIS.

DATES: We will consider all comments that we receive on or before [Insert date 30 days after date of publication in the Federal Register]. We will also consider comments made at the virtual public meeting that will be held during the comment period.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0042-0001>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2013-0042, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0042> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

Other Information: Details regarding the virtual scoping meeting, including the time, date, and how to participate, will be available at <http://www.aphisvirtualmeetings.com>.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Stankiewicz Gabel, Branch Chief, Biotechnology Environmental Analysis Branch, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1238; (301) 851-3954. To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851-3882, email: cynthia.a.eck@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the plant pest provisions of the Plant Protection Act (PPA), as amended, (7 U.S.C. 7701 et seq.), the regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received three petitions (referred to below as "the petitions") from Dow AgroSciences LLC (Dow) seeking determinations of nonregulated status for corn and soybean cultivars genetically engineered to be resistant to herbicides. The first petition, APHIS Petition Number 09-233-01p, seeks a determination of nonregulated status for corn (Zea mays) designated as event DAS-40278-9, which has been genetically engineered for increased resistance to certain broadleaf herbicides in the phenoxy auxin group (particularly the herbicide 2,4-D) and resistance to grass herbicides in the aryloxyphenoxypropionate (AOPP) acetyl coenzyme A carboxylase (ACCase) inhibitor group (i.e., "fop" herbicides, such as quizalofop-p-

ethyl). The second petition, APHIS Petition Number 09-349-01p, seeks a determination of nonregulated status for soybean (Glycine max) designated as DAS-68416-4, which has been genetically engineered for resistance to certain broadleaf herbicides in the phenoxy auxin growth regulator group (particularly the herbicide 2,4-D) and the nonselective herbicide glufosinate. The third petition (APHIS Petition Number 11-234-01p) seeks a determination of nonregulated status for soybean designated as event DAS-44406-6, which has been genetically engineered for resistance to certain broadleaf herbicides in the auxin growth regulator group (particularly the herbicide 2,4-D) and the nonselective herbicides glyphosate and glufosinate. The petitions state that these articles are unlikely to pose a plant pest risk and, therefore, should not be regulated articles under APHIS' regulations in 7 CFR part 340. These part 340 regulations are authorized by the PPA to prevent the introduction or dissemination of plant pests, and the decision on whether or not to approve the petitions will be based on this standard.

Notices were published¹ in the Federal Register for each petition advising the public that APHIS had received the petition and was seeking public comments on the petition. The notices for the first two petitions also sought comment on our plant pest risk assessment (PPRA) and our draft environmental assessment (EA) for each petition; we have not yet published a PPRA or EA for the third petition, so that notice sought comment on the petition, only.

Under the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.) (NEPA), Federal agencies must examine the potential environmental impacts of proposed major Federal actions significantly affecting the quality of the human

¹ Docket No. APHIS-2010-0103 published on December 27, 2011, 76 FR 80872-80873; Docket No. APHIS-2012-0019 published on July 13, 2012, 77 FR 41367-41368; and Docket No. APHIS-2012-0032 published on July 13, 2012, 77 FR 41361-41362. The Federal Register notices for the petitions and supporting and related materials, including public comments, are available at <http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0103>; <http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0019>; and <http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0032>.

environment before those actions can be taken. In accordance with NEPA, regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), U.S. Department of Agriculture (USDA) regulations implementing NEPA (7 CFR part 1b), and APHIS' NEPA Implementing Procedures (7 CFR part 372), APHIS has considered how to properly examine the potential environmental impacts of decisions for petitions for determinations of nonregulated status. For each petition for a determination of nonregulated status under consideration in the past, APHIS prepared an EA to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts. In two cases,² APHIS prepared an environmental impact statement (EIS).

In reviewing petitions for determinations of nonregulated status of crop cultivars genetically engineered to be resistant to various herbicides, APHIS has identified the potential selection of herbicide resistant weeds as a potential environmental impact. We have concluded for the three Dow petitions that it is appropriate to complete an EIS for the potential determinations of nonregulated status requested by the petitions in order to perform a comprehensive environmental analysis of the potential selection of 2,4-D resistant weeds and other potential environmental impacts that may occur as a result of making determinations of nonregulated status of these events. An EIS can examine the broad and cumulative environmental impacts of making determinations of nonregulated status of the three requested corn and soybean cultivars, including potential impacts of the proposed action on the human environment, alternative courses of action, and possible mitigation measures for reducing potential impacts.

² Glyphosate-Tolerant Alfalfa Events J101 and J163: Request for Nonregulated Status, Final Environmental Impact Statement-December 2010; Glyphosate-Tolerant H7-1 Sugar Beet: Request for Nonregulated Status, Final Environmental Impact Statement-May 2012.

Alternatives

The Federal action being considered is whether to approve the three petitions for nonregulated status. This notice identifies reasonable alternatives and potential issues that may be studied in the EIS. We are requesting public comments to further delineate the range of alternatives and environmental impacts and issues to be evaluated in the EIS for the three petitions. We will be hosting a virtual meeting during the scoping period to discuss the appropriate scope of the EIS (see ADDRESSES above). We are particularly interested in receiving comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments.

The EIS will consider a range of reasonable alternatives. APHIS is currently considering four alternatives: (1) Take no action, i.e., APHIS would not change the regulatory status of the corn and soybean events and they would continue to be regulated articles, (2) approve the three petitions for determinations of nonregulated status of the corn event and both soybean events, (3) approve the petition for determination of nonregulated status of the corn event and deny the two petitions for determination of nonregulated status of the soybean events, or (4) approve the petitions for determination of nonregulated status of the two soybean events and deny the petition for determination of nonregulated status of the corn event.

For the purposes of alternatives 3 and 4, APHIS will consider either approving both soybean petitions and denying the corn petition or denying both soybean petitions and approving the corn petition. Corn and soybean are often grown as rotation crops and these alternatives can compare the potential impacts of approving petitions for one rotation crop without the other. APHIS is grouping the two soybean petitions in alternatives 3 and 4 because the two soybean events share both 2,4-D and glufosinate resistance. One soybean, DAS 44406-6 is also resistant

to glyphosate. However, DAS 68416-4 (glufosinate, 2,4-D resistant) could be crossed with any glyphosate resistant soybean for which APHIS has previously made a determination of nonregulated status to create a soybean that is resistant to all three herbicides. Because APHIS does not regulate breeding of events for which APHIS has previously made a determination of nonregulated status, approving the petition for nonregulated status for DAS 68416-4 and not DAS 44406-6 could still result in a soybean resistant to all three herbicides being marketed. Based on the preliminary plant pest risk assessments for each soybean event, APHIS has not identified any plant pest risks associated with either soybean event. Therefore, APHIS plans to consider either approving or denying both soybean petitions together in these alternatives.

Environmental Issues for Consideration

We have also identified the following potential environmental issues for consideration in the EIS. We are requesting that the public provide information on the following questions during the comment period on this Notice of Intent (NOI):

- What are the impacts of weeds, herbicide-resistant weeds, weed management practices, and unmet weed management needs for crop cultivation, and how may these change with the approval of these petitions for nonregulated status of these three herbicide-resistant crops?
- In which weeds would the approval of the three petitions likely contribute to controlling the spread of biotypes that are resistant to more than one herbicide mode of action and how will that control influence weed management strategies in cropland or managed non-cropland?
- What weeds are currently resistant to herbicides in the phenoxyaliphatic acid herbicide class of the auxin growth regulator group (e.g., 2,4-D) and what is their natural frequency and occurrence in corn and soy crops, other crops, and in non-crop ecosystems?

- Would the increased use of 2,4-D associated with the approval of these three petitions cause an acceleration of the selection and spread of 2,4-D-resistant biotypes? Are there weeds that are more likely to be difficult to control if they become resistant to 2,4-D?
- In which crops or non-cropland weeds would the selection and spread of 2,4-D-resistant biotypes be most problematic in terms of available alternate weed management strategies and agronomic production?
- In which weeds would the approval of the three petitions likely contribute to the selection and spread of biotypes that are resistant to more than one herbicide mode of action and which would be most problematic for weed management strategies in cropland or managed non-cropland?
- What are the potential changes in agronomic practices, including crop rotation and weed management practices (e.g., herbicide use, tillage), for control of weeds in rotational crops that may occur with the use of these herbicide-resistant crops? What are the current and potentially effective strategies for management of herbicide-resistant weeds in crops? What are the costs associated with these practices and strategies?

Comments that identify other issues or alternatives that should be considered for examination in the EIS would be especially helpful. All comments received during the scoping

period will be carefully considered in developing the final scope of the EIS. Upon completion of the draft EIS, a notice announcing its availability and an opportunity to comment on it will be published in the Federal Register.

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 10th day of May 2013.

Michael Gregoire

Deputy Administrator, Biotechnology Regulatory Services, Animal and Plant Health Inspection Service.

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